IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 611 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

NEW INDIA ASSURANCE CO.LTD.

Versus

CHUNILAL UMABHAI NAI

Appearance:

BARRISTER SHRI RAJNI H MEHTA WITH ASSISTING COUNSEL SHRI NIRAV C THAKKER for Appellant

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/09/98

ORAL JUDGEMENT

1. Notice of respondent No.3 was published in Rajasthan Patrika, Jodhpur Edition, Rajasthan. Nobody is present on behalf of the respondent NO.3.

2. This appeal has been been filed by the insurance company under section 110-D of the Motor Vehicles Act,

1939 against the award of Motor Accident Claims Tribunal (Main) Banaskantha at Palanpur in M.A.C.P. No.106 of 1982 decided on 19-12-1985. The insurance company, the appellant herein, and the driver and owner of the offending vehicle were directed to pay to the claimants Rs.20,000/- with running interest at the rate of 6% p.a. from the date of application till the date of realization and proportionate costs of the application as compensation for the death of their son aged 14 years in the motor vehicular accident caused by the offending vehicle No.RRQ 1617. The Tribunal awarded Rs.15,000/for the death of the boy and Rs.5,000/- for the loss of expectation of life.

3. Only contention raised by the learned counsel for the appellant-insurance company is that the offending vehicle on the date of the accident was not covered under the insurance policy of the appellant and the Tribunal could not have ordered for the payment of this amount of compensation against it.

4. Learned counsel for the appellant produced for the perusal of this Court a zerox copy of the certificate No.106890/843, policy No.4535301740 issued on 6-10-1981 at Jodhpur, Rajasthan. From this policy, learned counsel for the appellant contended that the date of proposal and declaration is dated 22-9-1981 and it does not cover the period i.e. earlier to 22-9-1981 and as the accident occurred on 22-7-1981, the liability of insurance company has wrongly been taken. On being asked by the Court, the learned counsel for the appellant very fairly admitted that during the pendency of the claim petition, section 92-A has been inserted in the Motor Vehicles Act, 1939, wherein a provision has been made for awarding of interim compensation on the principle of no fault liability. Learned counsel for the appellant further admits that for death in the motor vehicular accident at the relevant time, the amount of compensation under `no fault liability' could have been about Rs.25,000/-. Learned counsel for the appellant, on being asked by the Court, has read its written statement and therefrom he is unable to point out that the appellant has taken any plea that the offending vehicle on the day of the accident was not covered under its insurance policy. Learned counsel for the appellant also fairly conceded that before the Tribunal, the insurance company, the appellant herein, has not pressed for amendment of the written statement as well as for framing of the issue that as the vehicle was not covered under the insurance policy, the liability of the appellant could not have been there for the payment of the amount of compensation. From the pleadings of the

appellant, which have been quoted in extenso by the Tribunal in its judgment, I find that the insurance company has taken the defence (i) that the jeep was not involved in the accident, (ii) the driver of the jeep was not driving it rashly and negligently, (iii) that the insured has failed to comply with the terms of the policy and therefore the insurance company is not liable, and (iv) the driver was not holding any valid driving licence to drive the vehicle. From these defences, which have been taken by the insurance company before the Tribunal, necessary inference flows therefrom that the vehicle was covered under the insurance policy but the insured failed to comply with the terms of the policy as the driver was not holding any valid licence to drive the vehicle. So before the Tribunal it was not the case of the insurance company that on the fateful day, the offending vehicle was not covered under its insurance policy. The matter has not ended here. The appellant though had sufficiently long time at their disposal i.e. about more than three years before the Tribunal but it has not prayed for amendment of the pleadings and for framing of the issue on this point. Nothing can be turned out from this policy that on the date of the accident, the offending vehicle was not covered under the insurance policy of the appellant. This policy which has been shown commences from 28-9-1981 and from this date or from the date of proposal and declaration, it cannot be assumed and presumed or accepted that the vehicle was not covered under the insurance policy for the period earlier to 22-9-1981 or 28-9-1981. What the learned counsel for the appellant tried to press and pursue the Court that this was the first policy which has been taken for the jeep which is the military disposal vehicle but I do not find anything from this insurance policy from which it can be inferred or accepted as what the learned counsel for the appellant contended. The fact that the appellant has not taken this point specifically before the Tribunal nor prayed for framing of issue on this point goes to show that it is not disputing the position that the vehicle on the fateful day was covered by the insurance policy. Not taking of this plea or raising this point goes against the appellant. The appellant after the decision given by the Tribunal against it has sought to raise this new point before this Court in the first appeal, which cannot be permitted. This Court cannot permit the appellant to raise a new ground on factual averments which is not raised by it before the Tribunal by making necessary pleadings, raising issue or arguing the same. Not only this, even in this appeal, no material whatsoever has been produced in the form of affidavit or any prayer has been made for grant of

permission to the appellant for amending the written statement. The appellant, insurance company, at the appellate stage cannot be permitted to raise entirely a new ground more so when it is not a pure question of law.

5. There is yet another reason which justifies the non-interference of this Court in the impugned award in the appeal. The Tribunal has awarded only small amount of compensation i.e. Rs.20,000/-. In the award of the Motor Accident Claims Tribunal under which small and meagre amount of compensation is awarded ordinarily, this court should not interfere.

6. In the result, this appeal fails and the same is dismissed. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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